

1
2
3
4
5
6
7
8 IN THE UNITED STATES DISTRICT COURT
9 FOR THE EASTERN DISTRICT OF CALIFORNIA

10 RONALD B. BUTLER,

11 Petitioner,

No. CIV S-99-1405 LKK KJM P

12 vs.

13 G.A. MUELLER, Warden, et al.,

14 Respondents.

ORDER

15 _____/
16 Petitioner has timely filed a notice of appeal of this court's May 11, 2007
17 dismissal of his application for a writ of habeas corpus for violation of the applicable statute of
18 limitations. Before petitioner can appeal this decision, a certificate of appealability must issue.
19 28 U.S.C. § 2253(c); Fed. R. App. P. 22(b).

20 A certificate of appealability may issue under 28 U.S.C. § 2253 “only if the
21 applicant has made a substantial showing of the denial of a constitutional right.” 28 U.S.C.
22 § 2253(c)(2). When the district court denies a habeas petition on procedural grounds without
23 reaching the prisoner's underlying constitutional claim, a certificate of appealability should issue
24 when the prisoner shows that jurists of reason would find it debatable whether the petition states
25 a valid claim of the denial of a constitutional right and that jurists of reason would find it


26 /////

1 debatable whether the district court was correct in its procedural ruling. Slack v. McDaniel, 529
2 U.S. 473, 484-85 (2000).

3 For the reasons set forth in the magistrate judge's March 15, 2007 findings and
4 recommendations, and this court's May 11, 2007 order, jurists of reason would not find it
5 debatable whether petitioner's application was properly dismissed. Accordingly, a certificate of
6 appealability should not issue in this action.

7 IT IS SO ORDERED.

8 DATED: June 20, 2007.

9
10 
11 LAWRENCE K. KARLTON
12 SENIOR JUDGE
13 UNITED STATES DISTRICT COURT
14
15
16
17
18
19
20
21
22
23
24
25
26